STATE OF CALIFORNIA
FISH AND GAME COMMISSION
AMENDED INITIAL STATEMENT OF REASONS
(Amended Pre-publication of Notice Statement)

Amend Section 507(c)
Title 14, California Code of Regulations
Re: Prohibition on Electronic or Mechanically-operated Devices

I. Date of Initial Statement of Reasons: June 24, 2003

II. Dates and Locations of Scheduled Hearings:

(a)	Notice Hearing:	Date:	June 20, 2003
		Location:	Mammoth Lakes, California
(b)	Discussion Hearing:	Date:	August 2, 2003
		Location:	Long Beach, California
(c)	Adoption Hearing:	Date:	August 29, 2003
		Location:	Santa Rosa, California

III. Description of Regulatory Action:

(a) Statement of Specific Purpose of Regulation Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary:

The existing regulation 507(c), Title 14 California Code of Regulations (CCR) adopted in 2001 prohibits the use of electronic or mechanically operated spinning blade devices or spinning wing decoys when attempting to take waterfowl from the start of waterfowl season through November 30. Alternatives to this existing regulation include:

1) no change: continue to prohibit the use of electronic or mechanically operated spinning blade devices or spinning wing decoys through November 30;

2) eliminate the regulation and allow the use of electronic or mechanically operated spinning blade devices or spinning wing decoys throughout the waterfowl hunting season;

3) eliminate the use of electronic or mechanically operated spinning blade devices or spinning wing decoys throughout the hunting season; and
4) eliminate the use of all self-powered waterfowl attractants.

Since 1998 the use of spinning wing decoys (hereafter SWD) for waterfowl hunting in California has increased. Anecdotal reports of substantially increased hunting success (e.g. higher harvests) were attributed to the use of SWD and concerns were expressed that these increased harvests would reduce the number of mallards that are hatched in California to a level below the normal annual variation in population size. The existing regulation was proposed and enacted as an additional means to measure the possible effect of SWD on the harvest of local mallard populations.

During the 1999-2000, 2000-2001 and 2001-2002 hunting seasons, the Department compared the daily success of more than 13,000 hunter days on the public hunting areas and found that hunters that use SWD harvested mallards at a slightly higher rate and about one more duck (of all species) per day than hunters using traditional methods. A more rigorous study by the University of California, Davis indicated a larger increase in harvest, particularly early in the season when hunters that used a SWD shot nearly 7 times more ducks than when the same hunters did not use the device. Early season mallard harvest is comprised primarily of birds from California.

Analysis of banding data from 1995 through 2001-02 (the most recent year of information currently available) indicates an increase in harvest of mallards banded in California until the 2001-2002 season. This increase corresponded with the liberalization of hunting regulations and the increased use of SWD beginning in 1998. A substantial decline in band recovery rates occurred in 2001, the first year of the existing regulation which prohibited the use of SWD prior to December 1 when mallards from California predominate the harvest.

Estimates of the breeding population of ducks in California reached a recent period peak in 1999, but declined to a recent low in 2002. This decline corresponded with the increased use of SWD. The estimated breeding population increased in 2003. Changes in breeding populations of ducks result from changes in recruitment as well as changes in mortality rates. Recruitment rates, as measured by age ratios in the fall harvest, were high in 1998 (indicating good production that year) but have been at about the long term average in recent years. Hence, the decline in the breeding population can not be directly attributed to declines in recruitment rates.

Despite these results, overall duck harvests declined in recent years, due to weather conditions that do not favor harvest and a decline in hunter participation.

From 1996-1998, when waterfowl regulations were similar and SWD were not in widespread use, approximately 45 percent of the mallard harvest on public hunting areas occurred prior to December 1. During 1999 and 2000, the proportion of mallard harvest on public hunting areas prior to December 1 rose to 53 and 63 percent, respectively. During 2001, the first year of the existing regulation, 44 percent of the mallard harvest occurred prior to December 1. During the 2002 season, hunting regulations were substantially different from the previous years and a comparison is not meaningful. Unlike other duck species, nearly 90 percent of the early season mallard harvest is comprised of mallards hatched in California.

Other investigations of the effectiveness of spinning wing decoys in Canada, Minnesota, Missouri, and Arkansas found similar increases in hunting success when a SWD was used. In Missouri and Arkansas, increases were similar to those measured by the Department survey. The results from the studies in Minnesota and Canada were similar to those in the U.C. Davis study. In the states of Washington and Oregon, the use of electronically operated decoys was prohibited.

Some members of the public have expressed concern regarding the effect of advances in hunting techniques, including SWD, on public perceptions of the hunting tradition. Others have supported their use. In a questionnaire survey conducted by the Department, the majority of respondents used SWD, but were opposed to their use if hunting regulations became more restrictive as a result of reduced populations, assuming the reduction is due to increased harvest caused by use of SWD. Others were opposed to their use due to concerns regarding fair chase and the potential effect on the traditions of waterfowl hunting. Updated population assessments and other analyses are scheduled to be completed during June and the results should be available in July.

(b) Authority and Reference Sections from Fish and Game Code for Regulation:

Authority: Section 355, Fish and Game Code.

Reference: Sections 355, 356 and 3005, Fish and Game Code.

(c) Specific Technology or Equipment Required by Regulatory Change: None.

(d) Identification of Reports or Documents Supporting Regulation Change:

2003 Draft Environmental Document Migratory Game Bird Hunting.

(e) Public Discussions of Proposed Regulations Prior to Notice publication:

Because the regulation change proposed for this section is not complex, no public meetings are being held prior to the notice publication. When the regulation was first modified, public meetings were held in Sacramento, Redding, Oakland and Long Beach.

IV. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change:

1. Eliminate the existing regulation that prohibits the use of SWD after November 30. This alternative would remove all regulation of SWD in California.

2. Eliminate the use of electronic or mechanically operated spinning blade devices or spinning wing decoys throughout the waterfowl hunting season;

3. Prohibit the use of all self-powered devices for waterfowl hunting.

(b) No Change Alternative:

The No Change Alternative would continue the regulation that allows the use of electronic or mechanically operated spinning blade devices or spinning wing decoys from the start of waterfowl season through November 30.

(c) Consideration of Alternatives:

1. The existing regulation complicates hunting regulations in California. To date, all analyses have indicated that SWD increase duck harvest, and this increased duck harvest corresponds to decreases in the breeding population of ducks in California. However, the effect of this increased duck harvest on duck population dynamics is uncertain,

because other factors (duckling survival, post-hunting season survival) may be more important to changes in duck populations. Most analyses suggest that habitat conditions, particularly during the spring nesting season, are more important to changes in duck populations than human-caused mortality through hunting.

2. The existing regulation complicates hunting regulations in California. The relationship between direct recovery rates of banded mallards since 1997 suggests that SWD led to increased harvests of mallards from California, and that these increases were eliminated when the existing regulation was adopted. A corresponding increase in the breeding population estimate suggests that harvest rates may have been reduced, leading to an increase in the population in subsequent years.

3. Continued technological advances in hunting techniques and equipment are considered by some hunters to be contrary to the traditional reasons for hunting. Many hunters gain satisfaction through improvements in traditional hunting skills, and some hunters have expressed concerns that debates over technological advances both shift the focus from more important conservation activities and potentially change the public perception of the hunting tradition. If so, these results could reduce the positive accomplishments provided through the support of wildlife conservation by hunting.

V. Mitigation Measures Required by Regulatory Action:

The proposed regulatory action will have no negative impact on the environment; therefore, no mitigation measures are needed.

VI. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

(a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of

California businesses to compete with businesses in other states. The proposed regulation(s) are intended to provide additional recreational opportunity to the public. The response is expected to be minor in nature.

(b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None.

(d) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

(d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.

(e) Nondiscretionary Costs/Savings to Local Agencies: None.

(f) Programs mandated on Local Agencies or School Districts: None.

(g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.

(h) Effect on Housing Costs: None.

Updated Informative Digest/Policy Statement Overview

Current regulation prohibits the use of electronic or mechanically operated spinning blade devices or spinning wing decoys when attempting to take waterfowl from the start of waterfowl season through November 30. **This regulation was adopted in 2001 as a means of further evaluating the possible effect of electronic or mechanically operated spinning blade devices or spinning wing decoys. Alternatives to the existing regulation include: 1) no change (continue the November 30 prohibition); 2) eliminate all regulation of electronic or mechanically operated spinning blade devices or spinning wing decoys; 3) eliminate the use of electronic or mechanically operated spinning blade devices or spinning wing decoys; and 4) prohibit the use of all self-powered devices for waterfowl hunting.**

Existing analyses suggest that spinning blade devices or spinning wing decoys increase duck harvest, and this technological advance may have increased duck harvests to higher levels than would have occurred under normal conditions. **The imposition of the mid-season (November 30) prohibition on the use of electronic or mechanically operated spinning blade devices or spinning wing decoys reduced direct recovery rates of mallards banded in California, and the 2003 estimated breeding population of mallards in California increased 27 percent.** Overall duck harvests have been declining in California. In California, mallards comprise about 25% of the total duck harvest and the vast majority, especially early in the hunting season, of these mallards originate in California. However, this correlative analysis does not prove that the decline in the breeding population estimate was solely due to the increased use of electronic or mechanically operated spinning blade devices or spinning wing decoys because other factors (breeding success and over-winter survival) may have changed coincidentally.

Editorial changes may also be proposed to improve the clarity and consistency of the regulations.